

Office of the General Counsel
Federal Election Commission
999 E Street, NW
Washington DC 20463

REC'D
FEDERAL ELECTION
COMMISSION

2015 MAR 10 PM 3:11

OFFICE OF GENERAL
COUNSEL

To Whom It May Concern:

MUR 6924

I write today to file this Complaint against Andrew Winer ("WINER"), currently the Chief of Staff to United States Senator Brian Schatz, Pacific Resources Partnership ("PRP") and its spokesperson and treasurer John White ("WHITE") for believed violation of Federal Election Campaign laws and regulations against coordinated communications regarding independent expenditures and fraud. All statements within this document are based on publicly available information and the Undersigned's belief. Sources are cited.

BACKGROUND

During the 2012 election cycle in Hawaii, WINER was involved in the following campaigns:

(1) **PRP Campaigns.** From February 2011 to 2013, WINER worked as a "political consultant" for Pacific Resource Partnership ("PRP"), a PAC, organized under Hawaii's Campaign Spending Laws as a Non-candidate Committee. WINER's role was to provide political advice, develop strategy and coordinate PRP's campaign to defeat former governor Benjamin Cayetano ("Cayetano") who came out of retirement to run for mayor of Honolulu, a 2012 non-partisan election.

For federal elections, PRP filed a FEC Form 5 as an organization engaged in Independent Expenditures during the 2012 election. PRP's FEC Identification Number is C90013533. PRP's total reported expenditure was \$122,138.12 that was shared equally between the campaigns of President Barack Obama and U.S. Senator Mazie Hirono.

(2) **Hirono Campaign.** WINER described himself as "senior advisor" for Mazie Hirono's 2012 "Mazie for Hawaii" successful campaign for the United States Senate.

3) **Democratic Party Coordinated Campaign.** In addition to being employed as a "political consultant" by PRP contributed and serving as "senior advisor" for the Mazie Hirono campaign, WINER was also employed by the Hawaii Democratic Party's Coordinated Campaign ("DP Coordinated"). The DP Coordinated campaign had both a federal and state component.¹

During the 2012 DP Coordinated campaign, WINER, who described himself as a "Consulting GOTV Strategist", assisted then-Lieutenant Governor Brian Schatz, who served as Chair for the Democratic Party of Hawaii's coordinated campaign. WINER was involved with consulting, messaging, and politicking during the campaign. WINER represented Hirono and her campaign in the coordinated campaign. However, he was not paid by the Hirono campaign but

¹ Filings were made with State of Hawai'i Campaign Spending Commission and the FEC.

was paid a total of \$17,000 from the state DP Coordinated. He was paid \$1,000 from federal DP Coordinated for "Consulting-Media-Radio". Thus, he was paid \$18,000 for the 45 days from the Primary to the General elections.

4. A PATTERN OF DECEPTION.

To provide a clearer understanding and context of WINER's actions during the 2012 election cycle, a review of his actions in conjunction with PRP's and WHITE's actions during the non-federal 2012 bipartisan mayoral election is appropriate as it suggests a pattern of deception which may be related to the federal campaigns.

In January 2012, former governor Ben Cayetano ("Cayetano") came out of a decade long retirement to run for mayor of Honolulu. The election was intensely contentious with Cayetano vowing to reject the City's proposed \$5.2 billion rail project if he was elected. He was opposed by then mayor Peter Carlisle and former state representative and city managing director Kirk Caldwell who both supported the rail project. Cayetano defeated both Carlisle and Caldwell in the primary election and faced Caldwell in a run off in the general election. Caldwell was supported by PRP and the late Senator Daniel K. Inouye who declared publicly that "it would take World War III" to kill the project.

WINER served as PRP's political consultant, developing strategy, interpreting polls, designing television and radio ads. PRP spent nearly \$4 million on attack ads designed to defeat Cayetano.

On October 22, 2012 Cayetano filed a lawsuit for defamation. (*Benjamin J. Cayetano v. Hawaii Carpenters Union Market Recovery Fund dba Pacific Resource Partnership, et al. Civil No. 12-1-2604-10.*)

Caldwell defeated Cayetano in the November 2012 general election and was elected mayor.

On June 1, 2012 PRP filed its state campaign spending report. The report made no mention that PRP had employed WINER as a political consultant or that it had paid him \$131,258 for his services.

On June 13, 2014, Cayetano and PRP settled the lawsuit. PRP agreed to issue a letter of apology that was published subsequently in a half page ad on two consecutive Sunday editions in the Star Advertiser, Hawaii's only major daily newspaper. PRP also agreed to contribute \$125,000 in Cayetano's name to non-profit organizations of his choice. The public apology was the first of its kind in Hawaii politics since Hawaii became a state in 1959.

PRP's internal emails. During the course of the lawsuit, Cayetano's attorney, James Bickerton, received 488 pages of PRP internal emails from a confidential source. The emails revealed that WINER had served as PRP's political consultant from February 2012 to late October 2012. (See Footnote 4. On February 1, 2013 WINER reported in his US Senate filing that he was actually employed by PRP as a political consultant from 2011 to 2013.)

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When PRP filed its campaign spending report on June 1, 2012, the internal emails had not yet been made public nor did PRP know they had been released to Cayetano's attorney. Thus, until the emails were made public in June 2014, there was no official state or federal documentation linking WINER to the PRP campaign against Cayetano.

On August 29, 2014, Cayetano filed a complaint with the Hawaii State Campaign Spending Commission against PRP alleging that PRP's June 1, 2012 campaign spending report was false because PRP deliberately did not reveal WINER's role as its political consultant. In fact, not only did the PRP report fail to mention WINER's name, role or compensation, it failed to mention Cayetano's name as the object of PRP's expenditures, as required by state law.

On November 20, 2014, the Hawaii State Campaign Spending Commission having earlier decided to levy only a fine against PRP reversed itself and by a 3-1 vote sent Cayetano's complaint to the City Prosecutor for possible criminal prosecution.

On the same date, the Commission voted to refer a separate complaint by Kristin Izumi-Nitao, Director of the State Campaign Spending Commission, against PRP to the City Prosecutor for not reporting \$86,000 in expenditures in PRP's support of Kirk Caldwell, Cayetano's opponent in the 2012 Mayoral election.

Both cases are now pending.

FEC ISSUES: DISCUSSION. U.S. Senator Daniel K. Inouye died on December 17, 2012. On December 27, 2012, Governor Neil Abercrombie appointed Brian Schatz, who was then Lieutenant Governor and chairman of the DP Coordinated campaign, to serve the remainder of Inouye's term as provided by Hawaii law.

On January 10, 2013, the newly appointed Senator Schatz then appointed WINER as his chief of staff. On February 1, 2013, WINER filed the required U.S. Senate ethics disclosure report, identifying himself publicly for the first time as a consultant for PRP from 2011 to January 2013 and as having been paid \$131,258 from PRP for his services during the reporting period.²

WINER's employment with PRP during the 2012 election cycle was not known to the public until the abovementioned 488 pages of internal emails were released to the public by Cayetano's attorney. See Footnote 3. The emails also revealed that although PRP's treasurer WHITE was the spokesman for PRP, he worked closely with WINER who provided advice on political strategy, tactics and designing television and radio ads See Footnote 2. So while WINER was the Senior Advisor for the Hirono Campaign and received payment from the DP Coordinated, he was employed also as a political analyst by PRP.

² The reporting period is the preceding calendar year up until the date of filing.

PRP's Independent Expenditure for Mazie's Hirono US Senate Campaign

As set forth in PRP's FEC's filing, it made Independent Expenditure for the Hirono Campaign in the amount of \$61,069.04. It was paid to Mission Control Inc., which did mailings for Hirono. See Footnote 4. WINER held the position of Senior Advisor and represented Hirono in the DP Coordinated, and was paid by the DP Coordinated while being employed by PRP during the same period of time.

Questions of the Democratic Party of Hawai'i's Coordinated efforts

The FEC has sent many letters for clarification to the DP of Hawai'i.³ A specific inquiry raised in the FEC's letter of May 15, 2003 Re: Year-End Report at paragraph 12 whether the DP Hawai'i had complied with *11 CFR §100.24* in that if a person spends more than 25% of his/her time on a federal election, they must be paid 100% from the federal funds. Of the \$18,000 paid to WINER, he reported in his US Senate filing that he was paid only \$1,000 from federal funds and \$17,000 from State funds.⁴

The person who could best respond to why WINER was paid with state funds for a federal election would be Senator Brian Schatz, who was the Chairperson of the DP Coordinated and, as noted below, along with WINER, publicly took credit for its operations and success.

An excerpt from WINER's post-election quotes in an article published the StarAdvertiser, Hawaii's only major daily newspaper, reveals his heavy involvement in the Hirono U.S. Senate campaign.

"Democrats identified about 70,000 infrequent voters statewide who would likely be open to voting for Hirono. Andy Winer, a Democratic strategist, said these voters received multiple mailers and telephone calls. Thousands also received personal visits by activists at their homes. "We pushed them pretty hard. We really went hard after the infrequent voting Democrats," he said. "This particular effort was probably the most coordinated and focused get-out-the-vote campaign that we've ever had." (StarAdvertiser Nov. 8, 2012)

It should be noted that WINER, an attorney, is a seasoned political consultant as he has been involved in numerous political campaigns, including past DP coordinated campaigns. As such he is familiar with federal election law and regulations, in particular, the requirements of *11 CFR §109-1, et seq.*

The FEC should also inquire whether the respective federal campaigns contributed to the DP Coordinated with the understanding that it would be able to place employees in the Coordinated and have them paid from the Coordinated Campaign. If that is the case then Respondent, though paid by the DP Coordinated, was in essence paid by the Hirono Campaign.

³

⁴ See Footnote 2 and relevant portions of the DP Hawai'i's filing with the FEC and the State of Hawai'i Campaign Spending Commission, attached hereto.

Violations of the Federal Elections Law and Conclusion

On information and belief, and based on the facts set forth above, WINER, through his self-described roles as the "senior advisor" to the Hirono Campaign, as "political consultant" to PRP, and as "strategist" for the DP Coordinated Campaign, violated the Federal election laws and regulations. It is believed that an investigation would support the finding that *11 CFR §109-1, et seq.* was violated in the three conditions of what is a coordinated communication.

Furthermore, the FEC should also investigate whether PRP and John White violated Federal Election laws and regulations by employing WINER as its political consultant at the same time PRP spent \$61,069.04 for expenditures in support of the Hirono campaign and while WINER worked simultaneously on Hirono's campaign as its "senior adviser" and as "strategist" for the DP Coordinated campaign. If true, it is believed PRP and WHITE violated Federal laws and regulations and that FEC should take appropriate action.

For these reasons, the undersigned Complainant respectfully requests a full investigation by the Federal Election Commission and that it determine the scope of the wrong doing of WINER, PRP and JOHN WHITE.

Affirmation of the Undersigned

I, Benjamin J. Cayetano, hereby affirm and state under penalty of perjury that the above foregoing statements are true and correct to the best of my knowledge and belief and the attachments hereto are true and correct.

Dated: Honolulu, Hawai'i, 5th day of March, 2015, 2014.

Benjamin J. Cayetano

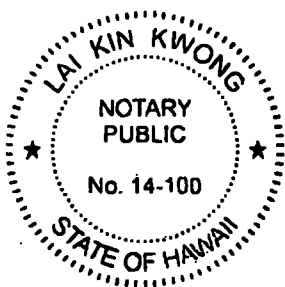
Full Name: Benjamin J. Cayetano

Address: Honolulu, Hawaii 96821

(notary attached)

STATE OF HAWAII)
) SS:
CITY AND COUNTY OF HONOLULU)

On this 5 day of March, 20 15, before me personally
appeared Benjamin J Cajetano
_____, to me known to be the
person(s) described in and who executed the foregoing instrument and acknowledged
that he/she/they executed the same as his/her/their free act and deed.



Lai Kin Kwong
Print Name: Lai Kin Kwong
Notary Public, State of Hawaii

My commission expires: 4-6-2018

Doc. Date: 3/5/15 # Pages 6 w/cert

Notary Name: Lai Kin Kwong First Circuit

Doc. Description Complaint

Lai Kin Kwong 3/5/15
Notary Signature Date

